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Fifty-eighth session
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EFFECTIVE FUNCTIONING OF HUMAN RIGHTS MECHANISMS: NATIONAL INSTITUTIONS AND REGIONAL ARRANGEMENTS

Letter dated 24 April 2002 from the Chairperson of the International Coordinating Committee of National Institutions for the Promotion and Protection of Human Rights addressed to the Chairperson of the fifty-eighth session of the Commission on Human Rights

It would be appreciated if the following documents* relating to the recently held Sixth International Conference of National Institutions for the Promotion and Protection of Human Rights could be circulated as documents of the fifty-eighth session of the Commission on Human Rights, at the request of the International Coordinating Committee of National Institutions for the Promotion and Protection of Human Rights, under agenda item 18 (b).

(Signed) Driss DAHAK
Chairperson

* Reproduced as received, in English only.

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Annex I

THE SIXTH INTERNATIONAL CONFERENCE FOR
NATIONAL HUMAN RIGHTS INSTITUTIONS
COPENHAGEN AND LUND 10-13 APRIL 2002

Sixth International Conference for National Institutions for the Promotion and Protection of Human Rights
Copenhagen and Lund, 10 - 13 April 2002
The Copenhagen Declaration

Recalling that the Universal Declaration of Human Rights affirmed that all human beings are born free and equal in dignity and in rights and that everyone is entitled to all the rights and freedoms set forth in the Universal Declaration without distinction of any kind.

Reaffirming the importance of international human rights treaties to the work of National Institutions and recalling that the Durban Declaration and Programme of Action refer to the International Convention on the Elimination of All Forms of Racial Discrimination as the principal instrument to combat racism, racial discrimination, xenophobia and related intolerance.

Affirming further the importance of implementing the commitments in the Declaration and Programme of Action adopted by the World Conference Against Racism, Racial Discrimination, Xenophobia and Related Intolerance.

Noting with appreciation the full participation of National Human Rights Institutions in the World Conference against Racism, Racial Discrimination, Xenophobia and Related Intolerance, as called for in their Rabat Declaration and welcoming the recognition by the World Conference of the important role that national human rights institutions play in combatting racism and racial discrimination, and of the need to strengthen such institutions and provide them with greater resources.

Committing to the implementation of the consensus statement of National Institutions adopted during the World Conference and recalling our acknowledgement in the Statement that, throughout human history, various forms of racism, racial discrimination, xenophobia and related intolerance have created millions of victims. Recognising that such discrimination can be overt or covert, direct or indirect and that institutionalised or systemic racism or related intolerance continue in spite of our efforts to eradicate them. Noting at the same time, that we must be careful to ensure that we identify and address all new manifestations of racism, racial discrimination, xenophobia and related intolerance.

Reiterating also the particular concern expressed in the National Institutions Statement regarding situations which risk escalating into genocide, ethnic cleansing or armed conflict and noting that national institutions have a particular role to play in providing early warning of the dangers in this regard.

Recalling also the conclusions of the Second Conference of Euro-Mediterranean National Human Rights Institutions, held in Athens from 1-3 November 2001, that National Institutions should be vigilant so that measures aimed at combating terrorism which are taken in their own countries following the attack of September 11th do not encroach on fundamental rights and liberties through restrictions which are disproportionate to their aims or through measures applied in a discriminatory manner, especially on racial or religious grounds.

Noting that the participation of National Institutions in the World Conference was based on regional and sub-regional meetings of national institutions held in Africa, the Americas, Asia and the Pacific and Europe and, in this regard:

> Welcoming the emphasis placed by the Sixth Annual Meeting of the Asia Pacific Forum of National Human Rights Institutions, held in Sri Lanka 24-27 September, 2001, on the importance of focussing on practical initiatives in implementing the outcomes contained in the Declaration and Program of Action of the World Conference;
>
> Welcoming also the Conclusions of the Second Conference of Euro-Mediterranean National Human Rights Institutions, relating to racism, racial discrimination, xenophobia and related intolerance, including the human rights of immigrants, migrant workers, non-refoulement and asylum seekers.
>
> Welcoming as well the convening of the First General Assembly of the Network of National Institutions of the Americas for the Promotion and Protection of Human Rights held 7-9 March 2002 in Jamaica, and applauding its focus on the human rights of Indigenous Peoples.

Noting with satisfaction the significant increase, since the Fifth International Conference held in Rabat, Morocco in April 2000, in the number of national institutions for the promotion and protection of human rights in all regions of the world and their efforts at full compliance with the Paris Principles (adopted unanimously by the United Nations Commission on Human Rights in 1992 and annexed to the United Nations General Assembly resolution 48/134 of 20 December 1993) and recognising their role in
combatting racism, racial discrimination, xenophobia and related intolerance;

Devoting the Sixth International Conference for National Institutions for the Promotion and Protection of Human Rights, organised by the Danish Centre for Human Rights and the Swedish Ombudsman Against Ethic Discrimination, from 10 to 13 April 2002, in consultation with the Chair of the International Co-ordinating Committee of National Human Rights Institutions and in co-

operation with the United Nations Office of the High Commissioner for Human Rights, to the theme of racism, racial discrimination, xenophobia and related intolerance:

Therefore National Human Rights Institutions shared information and examined potential best practices in the areas of remedies, monitoring and advocacy and education and, in this regard National Institutions:

1. Have at their disposal a broad range of **remedial functions** which, working in a complementary manner with other recourse mechanisms, should provide victims of racism with appropriate and just remedies and recourses, including, where appropriate:

   a. Hearing, consistent with the Paris Principles, complaints and petitions or working to ensure they can be brought forward to another competent authority.

   b. Using alternate dispute resolution such as conciliation, mediation or arbitration to address individual complaints of racism, as appropriate.

   c. Launching complaints, investigations or inquiries on their own initiative in response to serious or systemic human rights issues.

   d. Appearing as amicus curiae or as a party before the courts on important human rights cases.

   e. Developing partnerships with other institutions to ensure their work is complementary with that of National Institutions.

   f. Working to ensure a range of remedies, including compensation, are available to victims of racism.

2. Have a crucial role in **monitoring** and reporting on human rights violations, including by:

   a. Acting as a channel between action at the international level - through international treaty bodies, the special procedures, human rights resolutions and other mechanisms - and action at the national level to combat racism.

   b. Using special reports, public inquiries, annual reports and develop indicators to monitor and report on racism, racial discrimination, xenophobia and related intolerance

   c. Working to ensure the promulgation, reform and strengthening of national legislation and monitoring its implementation and consistency with domestic and international human rights laws.

d. Enhancing their research and policy capacity in order to track and report on incidents, types and causes of racism.

e. Developing partnerships with other relevant institutions, including civil society organizations to monitor and report on racism, racial discrimination, xenophobia and related intolerance

3. Have a key role in human rights **advocacy** and **education** including through:

a. Working to ensure their respective governments ratify international human rights treaties, remove reservations contrary to the object and purpose of the treaty and ensure consistency between domestic laws, programmes and policies and international human rights standards.

b. Disseminating information on international and domestic human rights laws and ensuring such information is accessible to all sectors of society.

c. Developing partnerships and strategies with the media to disseminate anti-racism information, encourage the media to avoid racial profiling or stereotyping of any group, whether an ethnic, racial, national, cultural, religious or linguistic group and to stress the value of cultural diversity.

d. Developing partnerships and constructive dialogue with educational institutions, civil society and community organisations, the judiciary and other relevant organisations to combat racism, racial discrimination, xenophobia and related intolerance.

e. Taking measures to build a culture of human rights and ensure access by all to human rights *,

f. Taking measures to protect National Institutions whose independence and impartiality are under threat from their governments.

This Declaration is intended as a contribution by the participants of the Sixth International Conference of National Human Rights Institutions to building a culture of respect for human rights and working to prevent racism, racial discrimination, xenophobia and related intolerance.

Annex II

THE SIXTH INTERNATIONAL CONFERENCE FOR
NATIONAL HUMAN RIGHTS INSTITUTIONS
COPENHAGEN AND LUND 10-13 APRIL 2002

Report by the General Rapporteur
13 April, 2002

Kerry Buck, Canadian Human Rights Commission

BACKGROUND AND CONTEXT OF THE CONFERENCE

The Sixth International Conferences of National Institutions held in Copenhagen and Lund Sweden from 10 to 13 April, 2002 was the culmination of a series of important meetings of National Institutions. These included regional meetings held in Africa, Europe, Latin America and Asia Pacific in preparation for the World Conference Against Racism, Racial Discrimination, Xenophobia and Related Intolerance, the productive Johannesburg meeting of National Institutions immediately prior to the World Conference and the Durban Conference itself. The theme therefore chosen for the Sixth International Conference of National Institutions was racism, racial discrimination, xenophobia and related intolerance.

The Paris Principles clearly state that National Institutions have a particular obligation to address racial and ethnic discrimination. In the consensus Statement adopted by National Institutions at the World Conference Against Racism, National Institutions reaffirmed this obligation and committed to provide the International Coordinating Committee with information on measures they have taken to address racism, including analysis of best practices. The Declaration and Programme of Action of the World Conference elaborated on this in a number of provisions, reiterating measures to be taken to enhance the work of National Institutions in ensuring remedies, monitoring, advocacy and education against racism. Below is an overview of discussion amongst conference participants on these three themes, drawing out some of the experiences and best practices of National Institutions in combatting racism, racial discrimination, xenophobia and related intolerance.

REMEDIES

The Range of Remedies...

Participating National Institutions discussed a broad range of remedies or complaints-handling methods - from alternate dispute resolution to adjudication of individual complaints to public inquiries on systemic racism, among others. They examined effective caseflow management, the need to balance transparency and confidentiality, to ensure independence and impartiality and to make remedies effective.

In the context of individual complaints of racism, there was considerable discussion of the use of alternate dispute resolution because of its accessibility, its flexibility to respond to complainant's needs, its relatively low cost and its educational impact, particularly for the perpetrators of racism. Participants identified three types of alternate dispute resolution - conciliation which refers to a process annexed to a court system and imposed by statute; mediation, where the parties voluntarily enter into the process and a thir party mediator facilitates a voluntary solution; and arbitration where resolution is made by a third party and is usually binding. The challenges of alternate dispute resolution included the potential imbalance of negotiating power between complainants and respondents, the need for adequate support for complainants, confidentiality of negotiated settlements and the limits this places on public education and the need for stronger powers of enforcement or follow-up. There was also discussion about the types of cases appropriate for alternate dispute resolution - perpetrators of racism associated with violence, for example, should face the full force of the law, including criminal prosecution where necessary and should not be able to avail themselves of alternate dispute resolution. The suggestion was made that criteria could be developed for determining which types of cases were not appropriate for alternate dispute resolution.

Also in the context of individual complaints, the Conference examined other remedies available, such as compensation for lost benefits or hurt feelings, payment of legal fees, provision of goods or services which were denied, provision of a job or promotion which was denied, issuing of apologies, declarations that an act constituted a violation of human rights and injunctions. Effective and fair case-flow management was discussed and the Conference examined suggestions regarding criteria for prioritisation of cases to allow National Institutions to focus their efforts on the most serious cases, the development of feasible timelines and means of ensuring consistency of decision-making when functions are decentralized within a national institution. Participants flagged the importance of a coordinating function within National Institutions, for instance Policy Units, to ensure consistency of decision-making. On the tension between confidentiality and transparency of information, the point was made that in certain types of cases, such as rape, the benefits to the victim of keeping information confidential outweighed the public interest in transparency..

Some Conference participants pointed out that, given the range of case-handling methods available to National Institutions, there are instances where they will act as investigators, prosecutors and judges in the same case. The Conference discussed the potential for conflict amongst these various roles and means of avoiding it, such as separating functions amongst different Commissioners, or creating separate human rights tribunals. The point was also made that advocacy and adjudication functions can be combined in the same institution without conflict.

For National Institutions which do not have a complaints-handling function or for situations of systemic human rights abuses, the Conference discussed the use of other types of 'remedies', such as special reports or public inquiries. Public inquires and special reports can target certain areas or practices where there is a significant problem of racism or discrimination. Special reports can not only provide details of a particular case but tell us more about vulnerable groups and regions. Such reports can also be used to lobby the government, the legislature and raise public awareness. The use of special programmes or affirmative action measures for vulnerable groups was also highlighted as another remedy for systemic discrimination. For example, the use of data collected from employers to assess representation of minorities among different occupational groups and different seniority levels was one means of monitoring and documenting the situation of these groups.

The Relationship between National Institutions and Other Human Rights Bodies

Under the rubric of remedies, Conference participants also examined the relationship between National Institutions and other institutions dealing with racism, such as the police, prosecution and courts as well as ombudsmen, and regional and international human rights mechanisms, government departments and civil society. In many countries, a mosaic of institutions has the power to respond to human rights issues and complementary relationships among them need to be developed to ensure human rights issues are not given short shrift in the consideration of complaints and to avoid conflicts of jurisdiction. Mention was made of the use of memoranda of understanding or framework agreements to avoid duplication of work. Informal means for continuous exchange of information and mutual referral of cases were also discussed. Establishing jurisdictional boundaries was seen as key. Suggestions were made concerning the establishment of data bases to ensure cross-checking a number of institutions to ensure complaints were not launched with a number of bodies at once.

Particular mention was made of the relationship between National Institutions and other institutions working on human rights - Ombudsmen for instance. There were a number of different models discussed - some National Institutions bring all human rights areas into one institution but with different Commission members having responsibility for different human rights issues while in other countries, responsibilities are divided amongst specialised agencies. Particularly in the latter case, mechanisms to enhance cooperation and collaboration among these human rights bodies was seen as key.

In many jurisdictions, the courts and National Institutions share a common responsibility to provide remedies for human rights complaints. The Conference flagged the importance of both National Institutions and the courts in translating human rights law into practice. It is important to appreciate that National Institutions are not courts; nor are they substitutes for courts. Each forum has its comparative advantages and disadvantages. National Institutions may be more accessible to complainants than the courts because they may be less expensive, less formal, less adversarial and faster. National Institutions should be seen as complementary to the courts and every effort should be made to promote a harmonious and complementary relationship and avoid conflicts of jurisdiction. As one example, National Institutions may have the capacity to intervene as *amicus curiae* in cases where the courts are considering serious human rights cases or considering legislation with a human rights impact. National Institutions might also have the capacity to launch complaints or inquiries on their own initiative in response to serious or systemic human rights issues. In appropriate cases, courts should have the capacity to refer cases to National Institutions, particularly if conciliation is a viable option. The need for training or sensitization of the judiciary to human rights was also mentioned as an important measure to ensure human rights considerations are not given short shrift in cases handled by the courts. Different strategies for sensitizing judges were discussed, including judicial colloquia, continuing legal education bodies, manuals, newsletters or training delivered by judicial peers.

Similarly the relationship between National Institutions and the Police needs to be carefully calibrated. Some forms of racial discrimination may be more appropriately dealt with by the police and the courts, which have remedies unavailable to National Institutions, such as criminal sanctions. National Institutions should be able to address the human rights dimensions of such cases, while leaving the criminal investigation and prosecution to others. Human Rights training programs for the police can be another important role for National Institutions, for example in sensitizing them to human rights norms governing police practices or enabling them to identify human rights violations. When police are themselves the source of human rights violations specialized mechanisms to receive and investigate complaints may be best placed to address such violations.

The question of follow-up to decisions by National Commissions was also discussed. The point was made that National Institutions are public bodies, and, as such, a failure by a National Institution to protect and promote human rights could itself be actionable by the victim.. Possible initiatives to make remedies more effective included provisions allowing National Institutions to go to court to force implementation of a remedy or publishing lists of those who fail to comply.

MONITORING

The International Conference discussed both the formal or legal type of monitoring as well as that undertaken through documentation or reporting of instances of racism. In regard to the legal framework, the complexity and scope of the laws and mechanisms governing racism in place at the domestic and international level was highlighted. Participants cited some thirty-three international

human rights treaties applicable to racism, racial discrimination, xenophobia and related intolerance, the range of protection against racism found in national institutions' respective constitutions, as well as legislation and judicial decisions. All of these provide the legal framework or monitoring mechanisms to deal with racial discrimination. As with other forms of discrimination, racial discrimination can be multiple in character - it can be overt or covert, systemic, direct or indirect. Therefore, when National Institutions monitor racism, they need to be cognizant not only of acts of racial discrimination as defined in the International Convention on the Elimination of All Forms of Racial Discrimination but also to acts that might result from other grounds of discrimination. They also need to be attuned to specific forms of discrimination particular to their own countries.

The Conference then discussed specific actions National Institutions might take to improve monitoring. First, Conference participants considered that National Institutions need to urge their respective governments to ratify international instruments on racism, racial discrimination, xenophobia and related intolerance. National Institutions need to be strategic and should give priority to the legal instruments of particular relevance to their specific country situations. Where States have entered reservations or made declarations, particularly those contrary to the object and purpose of the treaty, National Institutions should seek to have these removed. National Institutions could ensure reporting not only on the international treaties ratified by their respective states, but also on those not ratified, as well as reporting on the existence and content of reservations.

Second, National Institutions need to monitor the manner in which their respective states implement their treaty obligations. National Institutions participation in the drafting of state reports to the treaty bodies should be carefully calibrated so as not to undercut the independence of National Institutions. They might choose to submit shadow reports to the treaty bodies, include information on the concluding observations of treaty bodies in their annual reports or work with civil society in submitting information to the treaty bodies. National Institutions might also consider inviting members of treaty bodies to visit their countries to discuss committee reports publicly. To ease the burden of preparing comprehensive shadow reports, National Institutions might consider using short shadow reports to identify key human rights concerns. Conference participants raised the challenge of dealing with conflicting definitions or standards in international human rights law, for example different definitions of discrimination.

Conference participants also flagged that National Institutions should work to enhance their relationship with the treaty bodies. Treaty bodies could consider inviting National Institutions to join them in discussions when country reports are considered. Other special mechanisms of the United Nations, for example the special rapporteur on violence against women, or the special rapporteur on freedom of opinion and expression, might take similar initiatives when visiting or reporting on the specific country.

National Institutions have a role to play in encouraging their respective governments to respect their international human rights obligations and cooperate with the treaty bodies, even if the comments of the treaty bodies are at times discomforting.

National Institutions should have the statutory competence to examine international human rights instruments and make recommendations for their effective implementation. This should include the responsibility to review proposed legislation or any law in force in their respective countries to ensure they are compatible with their national constitutions and international instruments.

Monitoring by National Institutions also depends on their research and policy capacity. Such capacity is needed in order to be able to track and report on incidents, types and causes of racism, or to analyze and propose legislation or keep abreast of human rights law. As regards tracking incidents of racism, National Institutions can draw on a number of indicators, such as the number of complaints received by National Institutions, the police, or other bodies; incidence of racial violence; discrimination in the workplace, housing, provision of services or in the prisons. The particular difficulties involved in collecting information from the police was flagged by Conference participants. National census data can also be a source of information about racism and the relative treatment, access to health, education and poverty levels of different ethnic communities. National Institutions can also engage in public consultations to draw out information on the prevalence of racism and can work in cooperation with non-governmental organizations, other members of civil society and institutions active in human rights to assist in reporting on racism. Employers can be requested to provide information on the representation of different ethnic groups within their workforce. Decentralized or regional offices of national institutions can also be a useful conduit for monitoring and reporting on racism at the local level. Monitoring of case law and legal developments is also important to identify trends in racism, racial discrimination, xenophobia and related intolerance. The proposal was made that important decisions and law reports of national human rights institutions could be made available to other National Institutions.

The point was made by many participants that monitoring and reporting on racism requires more than quantitative analysis, it requires qualitative understanding of the forms, causes and impacts of racism. Some National Institutions spoke about initiatives to develop typologies of violations of human rights to assist in classifying complaints, understanding the context and the impact on the complainant and at the gravity of the complaint. The development of common indicators to monitor racial discrimination would be of assistance to National Institutions and help with qualitative analysis of discrimination.

The difficulty of reporting on racism is exacerbated by the fact that many victims decline to report incidents, either because they are afraid to go to the authorities or they are not aware of their rights or the mechanisms available. The efficacy of monitoring racial discrimination therefore goes hand in hand with the efficacy of public education initiatives. Adequate monitoring of racism also depends on cooperation with the victims of racism - often victims have limited access to law and legal remedies and consequently National Institutions should ensure they have access when National Institutions undertake monitoring. Ensuring access for victims requires questioning

victims in their own language, taking into account their levels of literacy and questioning in a culturally and gender sensitive manner. There was also discussion of some of the media which can be used for monitoring, including use not only of written materials but also of methods such as video-taping, for instance videoing post-mortems in certain cases.

Discussion about documentation of racism also led to a discussion of confidentiality of complainants' information. On a policy level, participants spoke of the need for interaction between National Institutions and bodies or laws concerned with confidentiality of personal information, such as access to information legislation or privacy laws. Challenges identified included the resources needed for electronic case-management, development of practices allowing the public release of information with identifying information removed and the ethical issues associated with the collection of data on racism and how victims are described and classified. While documentation of racism can promote human rights by combating racism, in certain countries it can also jeopardize human rights because those providing the information or collecting it can become targets unless the information is kept confidential. The publication of information about model cases was proposed as one means of reporting on racism without violating privacy.

ADVOCACY and EDUCATION

The Conference approached the issue of advocacy and education by National Institutions in two ways. First, it examined advocacy for treaty ratification and legal reform through techniques to make human rights standards known to decision-makers, use of the media as a tool for advocacy and strategies to comment on 'political' matters without becoming (or being accused of becoming) political. Second, the Conference examined education aimed at changing discriminatory practices by building a culture of respect and integrating human rights into basic training curricula and the labour market.

Advocacy for Legal Reform

On the first issue of advocacy for ratification of international human rights treaties, Conference participants stressed the importance of international human rights law to the work of the National Institutions. The binding nature of international human rights treaties means they can carry significant legal, moral and political weight with States. The need for training and education of decision-makers about international human rights standards was stressed. The aim is not simply to disseminate information, but to show decision-makers how international law can be a useful basis for their work. National Institutions also have a key role to play in advocating for the development and amendment of domestic legislation to ensure conformity with international and domestic human rights standards. National Institutions therefore need an enhanced capacity to systematically scrutinize and analyse legislation and government practices. For instance, some National Institutions provided examples of advocacy they had undertaken in response to anti-terrorism legislation developed post September 11th to ensure its consistency with human rights norms. The importance of policy statements, special reports and annual reports as tools for advocacy for legal reform was also flagged. Advocating for legal change also requires National Institutions to build

relationships with other key actors - government departments, legislators, judges and other decision-makers.

This discussion regarding the tools used for advocacy led to a wider discussion of the distinction between criticizing state action from a juridical, human rights perspective, and doing so from a partisan or political perspective. When National Institutions take positions contrary to those of their governments, and do so in the context of legally enshrined international, regional and domestic human rights standards, they are merely fulfilling a legitimate and necessary role set out in the Paris Principles. Conference participants stressed the need to safeguard this important role, and to provide the support of the international community when National Institutions were under attack by their governments. In this regard, suggestions were made for the development of concrete strategies to be undertaken to support National Institutions under threat.

Human Rights Education

The mandates of National Institutions in educating against racism vary widely, ranging from Institutions with an explicit anti-racism mandate to those with a general mandate to protect and promote human rights. Even for those with a more general mandate, the Durban Conference prompted an increase in anti-racism educational activities and Conference participants stressed that it is important that this momentum be maintained post Durban.

The role of National Human Rights Institutions goes beyond merely informing the public and extends to the responsibility of shaping values and attitudes. The overarching role of National Institutions is thus to build a culture of respect for human rights. The concrete measures to achieve this aim must necessarily depend on the political context of the state, as building a human rights culture will be a greater challenge and require different tools in countries marked by violent conflict, political instability or high rates of poverty or illiteracy.

There are two main target groups for human rights education: those who are at risk of being discriminated against and those who are at the greatest risk of discriminating, i.e. persons with power and influence over other persons and their lives. If members of the first group learn about rights and how to vindicate their rights, while members of the second group learn what discrimination looks like and how it can be avoided, then we will get results. Specific target groups identified by the Conference included the police, those working in the prison system, teachers, government officials, the judiciary, parents and religious or traditional leaders.

At the same time, because discrimination is systemic and pervasive, human rights education strategies also need to be aimed at society as a whole. One way of achieving this within limited resources is to *train the trainers* - to work with people from within trade unions, employer's groups, police forces or ethnic minority communities, for instance, to ensure they can spread the message to others. One National Institution spoke of this as creating "networks of human rights ambassadors." Developing cooperation with civil society organisations active in human rights can

also assist in easing resource pressures on national institutions. Tracking the effectiveness of educational strategies is also important, either through polling or surveys to measure whether knowledge or awareness of human rights increases from year to year.

Different channels can also be used to get the human rights message out to the public. Written educational materials can take many different forms - ranging from brochures, handbooks and training manuals to advertisements, annual reports and newsletters. Public lectures, sensitization and training programmes in human rights were also identified by Conference participants as important educational tools. The media can be an extremely important and useful channel, through coverage of individual cases, articles on human rights issues or televised debates. However, the media should not be targeted as mere conduits of information, but also as beneficiaries of human rights education programmes, since the media themselves can be propagators of racist information. Human rights education can turn the media into promoters of human rights and enable them to more easily identify incidents of racism, racial discrimination, xenophobia and related intolerance. Diversity of ownership of the media is key, as is ensuring that there is no "racial profiling" or stereotyping of ethnic, racial, national, cultural, religious or linguistic groups by the media. Conference participants also stressed the importance of working with alternative and community media in addition to the mainstream media. The Conference also discussed the integration of human rights curricula within the formal educational system and the use of other tools such as the establishment of human rights groups, intercultural associations or debating clubs. The formal educational sector was seen as a particularly important means of getting the human rights message to large sectors of the population.

Regardless of the method used or the forum, the *content* of human rights messages is the most important aspect of National Institutions educational work. Educational tools need to acknowledge and identify the many forms of racial discrimination, including overt racism, systemic or institutionalized racism and covert racism. They need to recognize the interrelationship between racism and other forms of discrimination, for example gender discrimination. Messages should not be aimed solely at condemning racist behaviour, but should be proactive and aimed at furthering interracial and intercultural understanding. Methods used included facilitating face-to-face meetings among groups and finding grounds of common interest among those groups so that the similarities, rather than the differences among them, become the focus of discussion.

Public information campaigns also need to be in plain and accessible language and in forms accessible to all educational levels, to rural and urban audiences and to different genders. Materials need to be tailored to the cultural context and use culturally specific materials and approaches. Although the content of human rights education might vary from group to group, depending on age, level of education, etc. the basic underpinning is constant and revolves around the rights and freedoms guaranteed in the Universal Declaration of Human Rights and other international and domestic human rights instruments. What is needed is to translate these international standards down into the local context. Human rights training and curricula should respond to the needs of different target audiences and can range from transmitting basic knowledge about human rights issues (values and awareness), to teaching strategies to monitor human rights violations or advocate

for change (accountability), to empowering individuals and communities not only to recognize violations but to make it their responsibility to prevent abuses (transformation). Current human rights training programs are often isolated and discreet programs and need to become part of a continuous, organised and sustainable civic education process.

The Conference also examined different ways of tackling racism in the labour market. Interracial/intercultural understanding can be enhanced by an integrated working life. Employers have to do more than hire members of ethnic minorities - they need to ensure that the workplace environment is free of racial discrimination. This requires a much more sustained and longer-term approach to human rights education and developing strategies to facilitate discussions between employers and employees. Addressing racism in the labour market also requires considering the economic implications for employers and developing a strategic approach. In all areas, whether the labour market, the schools, the prisons, the police or the courts, the best strategy is to start by identifying "pockets" of commitment to human rights and starting with the less difficult issues in order to gradually build support for human rights. The participants suggested that the International Coordinating Committee of National Institutions should establish a sub-Committee on education to exchange materials and best practices.

CONCLUSION

A common thread ran through the Conference discussions - that is, measures by National Institutions to provide remedies, to monitor and report on racism, to advocate for reform or to educate against racism cannot be seen in isolation from each other. The provision of effective remedies against racism depends on adequate monitoring of the extent, forms and causes of racism, which depends, in turn, on public human rights awareness. It is in this context that the plenary and working group discussions took place.

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PROMOTION AND PROTECTION OF HUMAN RIGHTS: STATUS OF INTERNATIONAL COVENANTS ON HUMAN RIGHTS

Letter dated 25 April 2002 from the Permanent Representative of Saudi Arabia to the United Nations Office at Geneva addressed to the Chairperson of the fifty-eighth session of the Commission on Human Rights

On behalf of the delegations listed in the annex, I have the honour to request that the attached joint statement* be circulated as an official document of the fifty-eighth session of the Commission on Human Rights under agenda item 17 (a).

(Signed) Abdulwahab ATTAR
Ambassador
Permanent Representative

* Reproduced as received, in English only.

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Annex

58th Session of the Commission on Human Rights
Agenda Item 17(a)

JOINT STATEMENT ON THE QUESTION OF THE DEATH PENALTY

(List of Co-sponsoring Delegations as in Annex)

We would like to place on record our disassociation from Commission on Human Rights resolution E/CN.4/2002/L.104 on the question of the death penalty for the following reasons:

(a) There is no international consensus that capital punishment should be abolished. Article 6, paragraph 2, of the International Covenant on Civil and Political Rights states that "sentence of death may be imposed only for the most serious crimes". This view was reflected in the joint statement contained in the document E/CN.4/2001/161 and E/CN.4/2001/161/Corr.1, in which 61 delegations disassociated themselves from a Commission on Human Rights resolution 2001/68. This view was also reflected in (i) the joint statement contained in E/CN.4/2000/162, in which 51 delegations disassociated themselves from a Commission on Human Rights resolution 2000/65 (ii) the joint statement contained in the ECOSOC document E/1999/113 in which 50 delegations disassociated themselves from the Commission on Human Rights Resolution 1999/61, (iii) the joint statement contained in document E/1998/95 in which 54 delegations disassociated themselves from a Commission on Human Rights resolution 1998/8, (iv) the joint letter contained in document E/CN.4/1998/156 in which 51 delegations expressed their reservations prior to the adoption of the Commission on Human Rights resolution 1998/8, and (v) the joint statement contained in document E/1997/106 in which 34 delegations disassociated themselves from a similar Commission on Human Rights resolution 1997/12.

(b) At the 54th UNGA in New York, a large majority of delegations disapproved of a draft resolution on the death penalty tabled by the EU. As a result, its co-sponsors decided to withdraw the EU draft resolution.

(c) In his statement to the plenary of the Rome Diplomatic Conference of Plenipotentiaries on the Establishment of an International Criminal Court on 17 July 1998, the President of the Conference declared that the debate at the Conference on the issue of which penalties should be applied by the Court showed that there is no international consensus on the inclusion or non-inclusion of the death penalty, and further that not including the death penalty in the Rome Statute would not in any way have a legal bearing on national legislations and practices with regard to the death penalty, nor should it be considered as influencing, in the development of customary international law or in any other way, the legality of penalties imposed by national systems for serious crimes.

(d) Capital punishment has often been characterised as a human rights issue in the context of the right of the convicted prisoner to life. However, this must be weighed against the rights of the victims and the right of the community to live in peace and security.

(e) Every State has an inalienable right to choose its political, economic, social, cultural and legal systems, without interference in any form by another State. Furthermore, the purposes and principles of the Charter of the United Nations, in particular, Article 2, paragraph 7, clearly stipulates that nothing in the Charter shall authorize the United Nations to intervene in matters which are essentially within the domestic jurisdiction of any State. Accordingly, the question of whether to retain or abolish the death penalty should be carefully studied by each State, taking fully into account the sentiments of the people and the state of crime and criminal policy. It is inappropriate to make a universal decision on this question or to propose such action in the forum of an international organisation.

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Annex

58th Session of the Commission on Human Rights
Agenda Item 17(a)

List of co-signatories:

Joint Statement on the Question of the Death Penalty

1 People's Democratic Republic of Algeria
2 Antigua and Barbuda
3 Commonwealth of the Bahamas
4 State of Bahrain
5 People's Republic of Bangladesh
6 Barbados
7 Republic of Benin
8 Republic of Botswana
9 Brunei Darussalam
10 Republic of Burundi
11 People's Republic of China
12 Islamic Federal Republic of the Comoros
13 Arab Republic of Egypt
14 Republic of Equatorial Guinea
15 State of Eritrea
16 Federal Democratic Republic of Ethiopia
17 Gabonese Republic
18 Republic of Ghana
19 Grenada
20 Republic of Guyana
21 Republic of Indonesia
22 Islamic Republic of Iran
23 Republic of Iraq
24 Jamaica
25 Japan
26 Hashemite Kingdom of Jordan
27 Republic of Kazakhstan
28 Republic of Kenya
29 Democratic People's Republic of Korea
30 State of Kuwait
31 Lao People's Democratic Republic
32 Republic of Lebanon
33 Socialist Peopie's Libyan Arab Jamahiriya

34 Republic of Malawi
35 Malaysia
36 Republic of Maldives
37 Islamic Republic of Mauritania
38 Mongolia
39 Union of Myanmar
40 Sultanate of Oman
41 Republic of the Philippines
42 State of Qatar
43 Republic of Rwanda
44 Saint Lucia
45 Saint Kitts and Nevis
46 Kingdom of Saudi Arabia
47 Republic of Sierra Leone
48 Republic of Singapore
49 Republic of the Sudan
50 Republic of Suriname
51 Kingdom of Swaziland
52 Arab Republic of Syria
53 United Republic of Tanzania
54 Kingdom of Thailand
55 Republic of Togo
56 Kingdom of Tonga
57 Republic of Trinidad and Tobago
58 Republic of Malawi
59 United Arab Emirates
60 Socialist Republic of Vietnam
61 Republic of Yemen
62 Republic of Zimbabwe

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Fifty-eighth session
Agenda item 10

ECONOMIC, SOCIAL AND CULTURAL RIGHTS

Note verbale dated 25 April 2002 from the Permanent Mission of Brazil to the United Nations Office at Geneva addressed to the Chairperson of the fifty-eighth session of the Commission on Human Rights

The Permanent Mission of Brazil to the United Nations Office and other International Organizations in Geneva presents its compliments to Ambassador Krzysztof Jakubowski, Chairperson of the fifty-eighth session of the Commission on Human Rights, and has the honour to forward herewith a copy of the Brazilian Government's written comments* on combating forced labour and violence in the countryside.

The Permanent Mission of Brazil would like to request that these written comments be circulated to all members of the Commission and to observer States as an official document of the fifty-eighth session of the Commission on Human Rights and inserted on the web site of the Office of the High Commissioner for Human Rights accordingly.

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* Reproduced as received, in the language of submission and in English only.

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Annex

COMBATING FORCED AND SLAVE LABOUR AND VIOLENCE IN THE COUNTRYSIDE

In view of the frequent reports of workers found in a situation of slavery in Brazil, principally in the northern and western central parts of the country, the Federal Government decided as of 1995 to adopt serious and firm measures to combat criminal practices involving the exploitation of labour. The action taken notably includes the establishment of the **Executive Group for the Suppression of Forced Labour** (GERTRAF) (Presidential Decree No. 1,538 of 27 June 1995) to coordinate the efforts of the various branches of government with a view to implementing the measures needed to suppress forced labour in the country. Represented in GERTRAF, which is accountable to the Government Council's Social Policy Chamber, are the Ministries of Labour and Employment; Justice; Environment; Agrarian Development; Agriculture; Development, Industry and Foreign Trade; and Welfare and Social Security.

Along with the creation of GERTRAF, the **Special Mobile Inspection Unit** was set up, within the Ministry of Labour and Employment, as the Executive Group's functional body (Ministerial Order No. 550 of 14 June 1995). With the setting up of the Mobile Inspection Unit, more effective mechanisms were established to combat slave labour. Teams of labour inspectors and federal police officers have thereafter been systematically and rigorously investigating all reports of slave labour and degrading labour practices submitted to the Federal Government by the various bodies and organizations of civil society, especially the Pastoral Land Commission (CPT) and the National Confederation of Workers in Agriculture (CONTAG).

Between 1995 and 2001, as a result of operations carried out by the Special Mobile Inspection Unit, 3,432 workers were released from rural properties reported as having instituted forced or degrading labour practices (see table below). The inspectors' reports, which contain documents providing evidence of offences committed, are forwarded to the Federal Prosecutor's Office and the Labour Prosecutor's Office for appropriate action to be taken in accordance with the powers vested in those bodies. There can be no doubt as to the wisdom of setting up the Special Mobile Inspection Unit, or as to its methods of work and the need for its activities to be continued. However, despite the progress made, the Federal Government is aware of the limitations of the action taken by the mobile inspectors and it is therefore now considering proposed short-term measures to strengthen the Unit.

It should be noted that a part has been played in the success of the Mobile Inspection Unit's work by all the bodies and institutions engaged in combating slave labour, in particular the Federal Prosecutor's Office, the Labour Prosecutor's Office, CPT and CONTAG. In pursuance of the efforts made by the Ministry of Labour and Employment and the Ministry of Justice, through the Secretariat of State for Human Rights (SEDH) and the Federal Police Department (DPF), action is being taken to prevent and combat forced or degrading labour practices. The measures adopted by the Federal Government notably include the following initiatives:

- Creation, under the Council for the Defence of the Rights of Human Beings (CDDPH), of a special commission with the task of proposing, in close coordination with GERTRAF and the National Child and Adolescent Rights Council (CONANDA), machinery that would ensure greater effectiveness in preventing and suppressing violence in the countryside, the use of forced and slave labour and the exploitation of child labour (CDDPH resolution No. 05/2002 of 28 January 2002);

- Holding of a meeting of the Technical Chamber on Contemporary Forms of Slavery on 29 and 30 November 2001, jointly with the Federal Prosecutor's Office and the Labour Prosecutor's Office, the Ministry of Labour and Employment, the Federal Judges' Association and the International Labour Organization (ILO), which provided the opportunity for an extensive debate among the participants on the difficulties of characterizing the use of slave labour as an offence, owing to the very general nature of article 149 of the Brazilian Penal Code;

- Inclusion of the topic of forced and slave labour in the agenda of the meeting held by SEDH on 5 February 2002 with state secretaries of justice, human rights and citizens' affairs to seek the state governments' cooperation in preventing and combating practices involving the exploitation of labour (SEDH signed an agreement in March 2002 with the National Council of State Secretaries of Justice, Citizens' Affairs, Prison Administration and Human Rights, establishing forms of cooperation to curb human rights violations in various areas, including work for the prevention and suppression of slave and child labour);

- Creation of a special division in the Federal Police Department for the suppression of slave labour;

- Initiation of negotiations with CPT and CONTAG for the implementation of "Balcões de Direitos" projects directed at the areas where rural workers are recruited and places in which forced labour is instituted;

- Negotiation, through the Inter-American Commission on Human Rights (IACHR), of an agreement for the amicable settlement of the case of a rural worker subjected to forced labour on an estate in the southern part of the State of Pará.

Dialogue with the petitioners in OAS on the non-pecuniary aspects of the amicable settlement permitted a more in-depth consideration of administrative and legislative measures directed at stepping up the fight against forced labour in the country. In addition to promoting discussion on the revision of the applicable provisions of the Penal Code, the Federal Government supports the approval of an amendment to article 243 of the Federal Constitution with a view to ensuring that land is expropriated where cases of forced labour are noted, as already happens with land used for the cultivation of psychotropic substances. The proposed constitutional amendment was adopted unanimously in the Senate, and awaits final approval by the Chamber of Deputies.

The topic of forced labour has also merited special attention in the process of revising the National Human Rights Programme (PNDH). The original programme, launched by the President of the Republic on 13 May 1996, had already included measures for the prevention and suppression of forced labour. The draft version of PNDH 2, which has been submitted for public consultation via the Internet and is now at the stage of final approval in SEDH, provides for significant progress to be made in comparison with PNDH 1 by stipulating, inter alia, the implementation of ILO Conventions Nos. 29 and 105; the restructuring of GERTRAF and the enlargement of its composition to include organizations of civil society; the strengthening of the Ministry of Labour and Employment's Mobile Inspection Unit; the creation of special divisions for the suppression of forced labour in police organizations; the promotion of awareness-raising campaigns on the issues of forced or degrading labour practices and contemporary forms of slavery; the sensitization of federal judges to the need to try crimes relating to forced labour; and study of the possibility of increasing the fines imposed on persons found guilty of instituting forced labour.

It should also be pointed out that, as from 2002, the Federal Government can count on effective support from the International Labour Organization (ILO), which will be implementing a project for combating forced labour in the country aimed at strengthening the various ongoing initiatives in this area.

The table below shows the number of operations carried out by the Special Mobile Inspection Unit between 1995 and 2001, and the number of workers released and number of persons arrested on charges relating to forced or degrading labour practices.

General table: Special Mobile Inspection Unit operations

1995-2001

Year	No. of operations	No. of workers released	No. of arrests made
1995	12	150	11
1996	28	288	-
1997	21	220	-
1998	18	119	2
1999	19	639	2
2000	26	583	1
2001	21	1 433	3
Total	145	3 432	19

Source: Ministry of Labour and Employment (MTE)/
Labour Inspection Secretariat (SIT).

It may be noted that, in the first four years of its existence (1995-1998), the Mobile Inspection Unit carried out 79 operations, securing the freedom of approximately 800 workers. In the following three years, the figures for workers released and operations carried out demonstrate that the Mobile Inspection Unit has intensified its efforts and taken a more balanced approach to planning, making for greater efficiency in its interventions. During the three-year

period 1999-2001, more than 2,600 workers were released and 77 mobile operations were conducted. From the second half of 1995 until 2001, a total of 156 such operations were carried out, ensuring the release of more than 3,400 workers and the payment of compensation and wages owed amounting to more than 4 million reals.

The greater effectiveness achieved in the latter three years is attributable, inter alia, to the sifting of evidence from the complaints received; the mapping work done prior to the Mobile Unit's operations; the planning of operations in coordination with other institutions, especially the Federal Police Department and the Federal Prosecutor's Office and Labour Prosecutor's Office; the identification of poverty-stricken regions, especially in the states of Maranhão and Piauí, which are the starting points for the migratory flow of enslaved workers; and improvement of the Mobile Unit's logistical capabilities, with the acquisition of vehicles, computers, film cameras, radio transmitter kits, GPS equipment, etc.

Another important step forward was the creation of a special programme, the Programme for the Eradication of Slave and Degrading Labour Practices, as part of the Federal Government's Multi-annual Action Plan (PPA). The programme, administered by the Ministry of Labour and Employment, has been allocated specific resources for action to suppress and prevent forced labour in the country over the period from 2000 to 2003, and its implementation, according to the Federal Government's assessment, has been extremely successful.

As regards prevention, mention should be made of the terms of reference for the education and occupational training of rural workers subjected to a slave or degrading labour regime, or of potential victims of such situations. The aims set forth in these terms of reference, drawn up in the context of the National Worker Training Plan, are to reach out to the main regions where workers are usually recruited for slave labour, and also to prevent a released worker, for want of the skills needed to take up a place in the labour market, from again falling victim to the exploiters of slave labour.

Cases of forced labour vary, moreover, according to the factors which apply. If, for example forest clearance operations are diminishing, the use of slave labourers decreases. Forced labour in Brazil also takes a form referred to as peonage or "debt servitude", which is of a temporary nature and relates to seasonal labour. Forest clearance for the expansion of existing estates or the creation of new ones, especially in the Amazon region, is an activity that accounts for the largest number of instances of slave labour encountered in the country, representing about 75 per cent of all cases.

This kind of economic activity occurs in remote woodland regions that are difficult of access and characterized by reduced public visibility. Whether illegal and degrading labour practices can be stopped therefore depends not only on action by the Federal Government, which has a statutory responsibility in this respect, but also on the vigilance and collaboration of state and municipal administrations and organized civil society. In the last few years, with support from the Ministry of Labour and Employment, important initiatives have been taken by NGOs,

trade unions and churches to combat forced labour in some of Brazil's municipalities. Such action was taken at Vila Rica in the State of Mato Grosso, at Pimenteiras in the State of Piauí, and at Feira de Santana in the State of Bahia, regions where workers are recruited for enslavement or subjected to degrading forms of labour in other parts of the country.

According to Pastoral Land Commission data, the number of persons found in a situation of slavery fell from 26,047 in 1995 to 2,487 in 1996, as a result of the creation of GERTRAF and following operations that were conducted throughout the national territory by the Ministry of Labour and Employment's Mobile Inspection Unit, with support from the federal police, to locate workers in a situation of slavery, set them free and return them to their places of origin and family homes, to impose fines on those responsible, to institute labour proceedings to secure payment of the amounts owed by the employers and enforce the labour legislation, and to bring criminal proceedings in connection with the specific crime of subjecting anyone to forced labour. The collaboration of the churches and trade unions has been fundamental in extending the scope of the actions of inspection and prevention of abuses, and the dedication of the public officials involved in these operations has furthermore been exemplary.

The 2001 Global Report of the International Labour Organization states, in paragraph 66, that "the Government of Brazil is among those showing signs of taking the matter of forced labour seriously. Forced labour allegations have received much attention in Brazil over the past decade". Concerned about the persistence of slavery worldwide, the Government of Brazil has contributed in the last three years to the United Nations Voluntary Trust Fund on Contemporary Forms of Slavery, the resources of which are used for concrete action by humanitarian groups and entities on all continents to break the cycle of slavery, whose principal victims are women, children and young persons. It should be noted that Brazil is the only country in the Americas to have contributed to the Fund in recent years.